



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** F. Rulison & Sons, Inc.

**File:** B-230758

**Date:** April 18, 1988

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### **DIGEST**

1. Burden of showing that the Small Business Administration (SBA) acted in bad faith because the protester was not provided sufficient time to submit data required for certificate of competency (COC) application is not met where the record shows that the SBA attempted to obtain an extension of the deadline for a COC determination, but the contracting agency, in its discretion, refused to grant an extension.

2. The granting of an extension for Small Business Administration action on a certificate of competency referral is a matter within the discretion of the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, controlling.

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### **DECISION**

F. Rulison & Sons, Inc. protests the failure of the Small Business Administration (SBA) and the Defense Logistics Agency (DLA) to allow sufficient time for Rulison to complete its application for a certificate of competency (COC) in connection with solicitation No. DLA100-88-B-0107, issued by DLA for fire-retardant trousers. Specifically, Rulison alleges that the SBA failed to provide the proper "notice period" for applying for a COC, and that this failure constituted an act of bad faith. Rulison also attributes bad faith to DLA, apparently because of its refusal to grant an extension for SBA's COC determination. As a result, Rulison concludes it was not afforded a proper opportunity to present its case.

We dismiss the protest.

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On February 12, 1988, Rulison was informed telephonically by the SBA office that its bid on the above solicitation had been rejected by DLA and that the matter had been referred to the SBA for certificate of competency (COC) proceedings. Rulison was informed of the basis for rejection by a letter sent by SBA via express mail on February 12 and received by Rulison on February 16 (a weekend and a holiday intervened). The letter also specified the requirements for a COC and stated that the application for the COC would be due February 23. As Rulison did not receive the letter until February 16, it called the SBA office to protest the late arrival of the letter and the time period for submitting the COC application. At this time, Rulison states that it was informed by a representative of the SBA that SBA procedures required a 10-day notice period and since the letter was late in arrival, an extension of time would be requested from the contracting agency. On February 22, however, the procuring activity refused to grant an extension; Rulison's submission therefore was to be submitted on the originally indicated date--February 23. Consequently, Rulison, in its haste, allegedly presented incomplete information on its COC application, which, Rulison maintains, resulted in the denial of the COC. On March 21, Rulison protested to our Office. As explained below, we see no basis to object to the actions of SBA or the contracting agency.

Under applicable procurement regulations, the SBA will take specific actions in response to a COC referral within 15 business days (or longer, if the SBA and the contracting agency agree). Federal Acquisition Regulation (FAR) § 19.602-2(a). If the SBA has not issued a COC within this period, the contracting officer is free to make award to another firm. FAR § 19.602-4(c). By requiring that award be withheld and providing for an expeditious COC determination, the regulations seek to balance the interest of the small business concern in obtaining an independent review of the ability to perform a contract with the interest of the government in proceeding with the acquisition. See Lasanta Sportswear, Inc., B-218893 et al., June 3, 1985, 85-1 CPD ¶ 634.

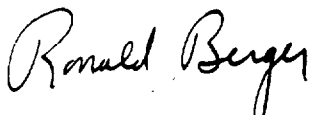
Our Office reviews COC determinations when a protester's submission indicates that SBA action on a referral may have been taken fraudulently or in bad faith or that the SBA disregarded information vital to a responsibility determination. ESCO Air Filters, B-225552.2, Mar. 12, 1987, 87-1 CPD ¶ 279. This standard of review applies to allegations by a protester that the SBA acted in bad faith to prevent a firm from having a fair opportunity to apply for a COC. Id. To establish bad faith, the courts and our Office require

virtually irrefutable proof that government officials had a "specific and malicious intent" to injure the protester. Marine Industries Northwest, Inc. et al., 62 Comp. Gen. 205 (1983), 83-1 CPD ¶ 159.

Rulison has introduced no probative evidence of bad faith other than its bare chronology of the events in question. According to Rulison, the SBA office stated that its procedures required 10 days notice to the party applying for a COC. Our Office, however, has been advised by SBA that SBA's internal standard operating procedures provide for a period of 5 working days from receipt of SBA's letter for a firm to submit its COC application. Since Rulison was informed of the referral on February 12, received the SBA's letter on February 16, and was required to submit the COC application on February 23, Rulison had the requisite notice. Moreover, the SBA attempted to obtain a further extension of time from DLA. Thus, there is simply nothing in the record presented by Rulison that suggests bad faith on the part of the SBA.

With regard to DLA's refusal to grant the extension, we consistently have taken the position that it is the responsibility of the small business firm seeking the COC to file a timely, complete and acceptable application with the SBA. ESCO Air Filters, B-225552.2, supra. Further, the granting of an extension for filing and processing a COC application is a matter solely within the contracting agency's discretion, and the bidder's interests are not controlling. Spheres Co., B-225755, June 5, 1987, 87-1 CPD ¶ 573; Lasanta Sportswear, Inc., B-218893, et al., supra. Our Office therefore does not review the refusal to grant a filing extension for a COC. See SALJ of America, Inc., B-217258, Apr. 9, 1985, 85-1 CPD ¶ 408.

The protest is dismissed.



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